

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RICHARD C. SCHMEER,	:	
Plaintiff,	:	
v.	:	Civil Action No. 05-383J
DEPARTMENT OF CORRECTIONS,	:	
MEDICAL STAFF S.C.I. HOUTZDALE,	:	
Defendants	:	

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on November 29, 2005, docket no. 2, recommending that the complaint be dismissed for failure to state a federal claim, 28 U.S.C. § 1915(e)(2)(B), without prejudice to plaintiff pursuing state law claims in state court.

The plaintiff was notified that, pursuant to 28 U.S.C. § 636(b)(1), he had ten days to serve and file written objections to the Report and Recommendation. Plaintiff filed a motion to extend time to file an amended complaint, docket no. 4, which was denied, and which proposed amendments that would not have cured the defect described by the Report and Recommendation: plaintiff is attempting to bring a medical malpractice claim as a civil rights action.

After de novo review of the record, the Report and Recommendation, and noting the absence of objections thereto, the following order is entered:

AND NOW, this 20th day of December, 2005, it is

ORDERED that plaintiff's complaint is dismissed for failure to state a federal claim, without prejudice to bringing any state law claims in the appropriate state court. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE

cc:

Richard C. Schmeer GB-5327
S.C.I. Houtzdale
P.O. Box 1000
Houtzdale, PA 16698-1000